

Senate File 2098 - Introduced

SENATE FILE 2098

BY PETERSEN and BRASE

A BILL FOR

1 An Act requiring employers to provide reasonable accommodations
2 to employees based on pregnancy, childbirth, and related
3 medical conditions and making penalties applicable.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 216.6, subsection 2, Code 2016, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. *f.* (1) For the purposes of this paragraph,
4 unless the context otherwise requires:

5 (a) "*Reasonable accommodation*" includes but is not limited
6 to more frequent or longer breaks, time off to recover
7 from childbirth, acquisition or modification of equipment,
8 performance of job duties while seated, temporary transfer to a
9 less strenuous or hazardous position, job restructuring, light
10 duty, break time and private non-bathroom space for expressing
11 breast milk, assistance with manual labor, or modified work
12 schedules.

13 (b) "*Related medical condition*" includes but is not limited
14 to lactation or the need to express breast milk for a nursing
15 child.

16 (c) "*Undue hardship*" means an action requiring significant
17 difficulty or expense.

18 (2) It shall be an unfair or discriminatory practice for an
19 employer to do any of the following:

20 (a) Deny a reasonable accommodation in the terms,
21 conditions, or privileges of employment to a job applicant or
22 employee based on the employee's or applicant's pregnancy,
23 childbirth, or related medical condition if the employee or
24 applicant requests a reasonable accommodation, unless the
25 employer can demonstrate that providing the accommodation would
26 impose an undue hardship on the employer's program, enterprise,
27 or business.

28 (b) Take adverse action against an employee who requests
29 or uses a reasonable accommodation pursuant to this paragraph.
30 Such adverse action includes but is not limited to failing to
31 reinstate the employee to the employee's original job or to
32 an equivalent position with equivalent pay and accumulated
33 seniority, retirement, fringe benefits, and other applicable
34 service credits when the employee's need for a reasonable
35 accommodation ceases.

1 (c) Deny employment opportunities to a job applicant or
2 employee if such denial is based on the need of the employer
3 to make a reasonable accommodation to the job applicant or
4 employee pursuant to this paragraph.

5 (d) Require a job applicant or employee affected by
6 pregnancy, childbirth, or a related medical condition to accept
7 an accommodation that the applicant or employee declines to
8 accept.

9 (e) Require an employee to take employment leave if another
10 reasonable accommodation can be provided pursuant to this
11 paragraph without undue hardship to the employer.

12 (f) Make an inquiry prior to employment regarding a
13 job applicant's pregnancy, childbirth, or related medical
14 condition.

15 (3) An employer shall engage in a timely, good-faith, and
16 interactive process with an employee to determine effective
17 reasonable accommodations pursuant to this paragraph.

18 (4) (a) An employer shall have the burden of proving undue
19 hardship under this paragraph. In making a determination of
20 undue hardship, factors to be considered by the commission
21 include but are not limited to:

22 (i) The nature and cost of the accommodation.

23 (ii) The overall financial and other resources of the
24 employer.

25 (iii) The overall size of the business of the employer with
26 respect to the number of employees.

27 (iv) The number, type, and location of the employer's
28 facilities.

29 (b) The fact that an employer provides or would be
30 required to provide a similar accommodation to another class
31 of employees that requires such accommodation shall create a
32 rebuttable presumption that the accommodation does not impose
33 an undue hardship on the employer.

34 (5) An employer shall not be required under this paragraph
35 to create additional jobs or provide additional work hours

1 that the employer would not otherwise have created or
2 provided, unless the employer does so or would do so to
3 accommodate another class of employees that requires such
4 accommodation. An employer shall not be required under this
5 paragraph to discharge any employee, transfer any employee
6 with more seniority than an employee requesting a reasonable
7 accommodation, or promote any employee who is not qualified
8 to perform a job, unless the employer does so or would do so
9 to accommodate another class of employees that requires such
10 accommodation.

11 (6) An employer shall post written notice in a form
12 prescribed by the commission of the right to be free from
13 discrimination in relation to pregnancy, childbirth, or a
14 related medical condition, including the right to reasonable
15 accommodations based on pregnancy, childbirth, or a related
16 medical condition, pursuant to this paragraph conspicuously
17 at the employer's place of business in an area accessible
18 to employees. Such notice shall also be provided to the
19 following:

20 (a) New employees at the commencement of employment.

21 (b) Existing employees by January 1, 2017.

22 (c) Any employee who notifies the employer of the employee's
23 pregnancy within ten days of such notification.

24 (7) The commission shall develop courses of instruction
25 and conduct ongoing public education efforts as necessary to
26 inform employers, employees, employment agencies, and job
27 applicants regarding their rights and responsibilities under
28 this paragraph.

29 (8) This paragraph shall not be construed to narrow
30 or restrict any other provision of law relating to sex
31 discrimination or pregnancy, or to diminish any right or
32 responsibility thereunder.

33 EXPLANATION

34 The inclusion of this explanation does not constitute agreement with
35 the explanation's substance by the members of the general assembly.

1 This bill establishes additional unfair or discriminatory
2 employment practices under Code chapter 216, "Iowa Civil Rights
3 Act of 1965", concerning pregnancy, childbirth, or related
4 medical conditions.

5 The bill prohibits an employer from denying a reasonable
6 accommodation in the terms, conditions, or privileges of
7 employment to a job applicant or employee based on the
8 employee's or applicant's pregnancy, childbirth, or related
9 medical condition upon request, unless the employer can
10 demonstrate that providing the accommodation would impose an
11 undue hardship on the employer.

12 The bill prohibits an employer from taking adverse action
13 against an employee who requests or uses such a reasonable
14 accommodation.

15 The bill prohibits an employer from denying employment
16 opportunities to a job applicant or employee if such denial is
17 based on the need of the employer to make such a reasonable
18 accommodation.

19 The bill prohibits an employer from requiring a job
20 applicant or employee affected by pregnancy, childbirth, or a
21 related medical condition to accept an accommodation that the
22 applicant or employee declines to accept.

23 The bill prohibits an employer from requiring an employee
24 to take employment leave if another reasonable accommodation
25 can be provided pursuant to the bill without undue hardship to
26 the employer.

27 The bill prohibits an employer from making an inquiry
28 prior to employment regarding a job applicant's pregnancy,
29 childbirth, or related medical condition.

30 The bill defines "reasonable accommodation" to include but
31 not be limited to more frequent or longer breaks, time off
32 to recover from childbirth, acquisition or modification of
33 equipment, performance of job duties while seated, temporary
34 transfer to a less strenuous or hazardous position, job
35 restructuring, light duty, break time and private non-bathroom

1 space for expressing breast milk, assistance with manual labor,
2 or modified work schedules.

3 The bill defines "related medical condition" to include but
4 not be limited to lactation or the need to express breast milk
5 for a nursing child.

6 The bill defines "undue hardship" as an action requiring
7 significant difficulty or expense.

8 The bill requires an employer to engage in a timely,
9 good-faith, and interactive process with an employee to
10 determine effective reasonable accommodations pursuant to the
11 bill.

12 The bill specifies that an employer shall have the burden
13 of proving undue hardship under the bill. The bill provides
14 a nonexclusive list of factors to be considered by the civil
15 rights commission in making such a determination. The bill
16 specifies that an employer who provides or would be required to
17 provide a similar accommodation to another class of employees
18 that requires such accommodation shall create a rebuttable
19 presumption that the accommodation does not impose an undue
20 hardship on the employer.

21 The bill does not require an employer to create additional
22 jobs or provide additional work hours that the employer
23 would not otherwise have created or provided, unless the
24 employer does so or would do so to accommodate another class
25 of employees that requires such accommodation. The bill does
26 not require an employer to discharge any employee, transfer
27 any employee with more seniority than an employee requesting
28 a reasonable accommodation, or promote any employee who is
29 not qualified to perform a job, unless the employer does so
30 or would do so to accommodate another class of employees that
31 requires such accommodation.

32 The bill requires an employer to post written notice of the
33 right to be free from discrimination in relation to pregnancy,
34 childbirth, or a related medical condition, including the right
35 to reasonable accommodations, conspicuously at the employer's

1 place of business in an area accessible to employees. The bill
2 also requires such notice to be provided to new employees,
3 existing employees by January 1, 2017, and any employee who
4 notifies the employer of the employee's pregnancy.

5 The bill requires the commission to develop courses of
6 instruction and conduct ongoing public education efforts as
7 necessary to inform employers, employees, employment agencies,
8 and job applicants regarding their rights and responsibilities
9 under the bill.

10 The bill shall not be construed to narrow or restrict
11 any other provision of law relating to sex discrimination
12 or pregnancy, or to diminish any right or responsibility
13 thereunder.

14 Penalty provisions for discriminatory employment practices
15 are applicable to the requirements established in the bill.